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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,227	06/26/2003	William E. Spindler	50460-83518	5896
23641 7590 07/08/2010 BARNES & THORNBURG LLP 600 ONE SUMMIT SQUARE FORT WAYNE, IN 46802				
EXAMINER CARRILLO, BIBI SHARDAN				
ART UNIT 1711		PAPER NUMBER		
NOTIFICATION DATE 07/08/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/607,227

Applicant(s)

SPINDLER, WILLIAM E.

Examiner

Sharidan Carrillo

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 85 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention

The limitations of claim 85 constitute new matter. Specifically, the originally filed specification does not provide support for a cleaner having "noncorrosive properties".

Additionally, page 3, line 16 of the instant specification states "The cleaning compound of the present invention provides a potent biocide with minimal corrosive properties.

The limitations of a "ceiling" constitutes new matter, not supported by the originally filed specification

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 85 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 85 is indefinite for the following reasons. Claim 85 recites the closed language of "consisting of". However, the claim further recites the open-language of "includes".

Claim 85 is indefinite because the claim recites that the peroxide has a corrosive acidic pH and then further claims that the components when combined has "noncorrosive properties" and at the end of the claim, further recites that the cleaner does not produce "any substantial corrosive effects". Additionally, it is unclear what the skilled artisan would consider as "any substantial corrosive effects".

Claim Rejections - 35 USC § 102

5. Claim 85 is rejected on the ground of Res Judicata where it was based on a prior adjudication, against the inventor on the same claim, a patentably nondistinct claim, or a claim involving the same issue. In re Freeman, 30 F.3d 1459, 31 USPQ 2d 1444 (Fed. Cir. 1994). Edgerton v. Kingland, 168 F. 2d 121, 75 USPQ 307 (D.C. Cir. 1947). In re Szwarc, 319 F.2d 277, 138 USPQ 208 (CCPA 1963). In re Katz, 467 F.2d 939, 167 USPQ 487 (CCPA 1970) (prior decision by District Court). Specifically claim 85 is rejected on the ground of Res Judicata since an earlier decision of affirmation was rendered by the Board of Appeals on 7/30/09 (MPEP 706.03 (w)).
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 85 is rejected under 35 U.S.C. 102(b) as being anticipated by Arbogast et al. (5739327).

Re claim 85, Arbogast teaches a method of a surface (i.e. floor) in a food processing environment (i.e. kitchen, col. 11, lines 25+) comprising a first chamber comprising hydrogen peroxide and a second chamber comprising an alkaline solution sufficient to maintain the pH to greater than about 8, in the range of 8.5 to 10.5 (col. 9, lines 15-65). The limitations directed to a peroxide having an acidic pH, refer to col. 9, lines 45-50 which teaches that the compositions include a buffer (admixed or in a separate container) which will be acidic or alkaline or both depending upon whether the delivery systems is single or double. In col. 9, lines 25+, Arbogast teaches a dual delivery, wherein the one chamber contains the oxygen source and an acidic buffer and the other chamber holds the alkaline solution. Re limitations directed to the additive, refer to col. 10, lines 15-20 for example. Re the limitations directed to food soils and stains, refer to col. 17, lines 1-5 for example. Re the limitations of raising the pH to alkaline, applicant is directed to col. 9, lines 60+. Re the limitations directed to the foaming and corrosiveness are chemical properties of the composition. Since Arbogast teaches the same composition and further teaches the claimed surfactants as the instantly claimed invention, the limitations are met by the prior art.

8. Claim 85 is rejected under 35 U.S.C. 102(b) as being anticipated by Rees (5743514).

Rees teaches a method of cleaning food soils from hard surfaces, such as tile (col. 2, lines 10-15, col. 7, lines 25-30, Example 2) comprising a first vessel comprising peroxide having a corrosive acidic pH (col. 5, lines 25-30) and a second vessel comprising an alkaline agent (col. 6, lines 10-15, col. 3, lines 60+) to raise the pH within the range of from 7-13 (claim 18). Re limitations directed to additives, refer to col. 5, lines 63-68, col. 7, lines 15-25. Re the limitations directed to the foaming and corrosiveness are chemical properties of the composition. In view of the indefiniteness and since Reeves teaches the same composition as the instantly claimed invention, the limitations are met by the prior art.

9. Claim 85 is rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al. (6391840).

Thompson et al. teach a composition for cleaning and disinfecting surfaces and specifically teaches removing food soils from floor surfaces such as tiles (Example 5, col. 17, lines 25+, col. 18, lines 25+). Col. 4-5 bridging teaches a two chamber container comprising a) hydrogen peroxide having an acidic pH (col. 8, lines 58+) in first chamber and an alkali component in a second chamber, the alkali component raising the pH of the solution to a pH of 11 (col. 14, lines 1-25). Re limitations directed to additives, refer to col. 9-10. Re the limitations directed to the foaming and corrosiveness are chemical properties of the composition. In view of the indefiniteness and since Thompson teaches the same composition and surfactants, as the instantly claimed invention, the limitations are met by the prior art.

Response to Arguments

10. Applicant's submits a 1.132 Declaration, citing the corrosive nature of bleach to overcome the 102b rejections of Arbogast, Rees, and Thompson. The 102(b) creates a statutory bar and a 1.132 Declaration will not overcome the statutory bar rejections (MPEP 2136.05, 706.02 b). Evidence of secondary considerations is irrelevant to 35 U.S.C. 102 rejections and thus cannot overcome a rejection so based. In re Wiggins, 488 F.2d 538, 543, 179 USPQ 421, 425 (CCPA 1973) (MPEP 2131.04).

11. Furthermore, even if the claims were unpatentable over the prior art of Arbogast, Rees, and Thompson, which they are not, the Declaration would not be persuasive for the following reasons. Specifically, applicant's declaration is not commensurate in scope with applicant's claimed invention. In paragraphs 8-9 of the Declaration, applicant argues that binary liquid hydrogen peroxide products (claimed subject matter) were effective at removing *Listeria monocytogenes* from a food processing plant as compared to chlorinated cleaners. Applicant's declaration is not persuasive because it is not commensurate in scope with the instantly claimed invention. The Declaration does not specifically describe the products used by United Food Group and under what cleaning conditions. Specifically, the declaration states binary liquid hydrogen peroxide products, but does not specifically claim applicant's invention nor does the declaration discuss method of dispensing, such as a two component chamber. Furthermore, applicant's claimed invention is not directed to the removal of *Listeria monocytogenes* from a food processing plant.

12. Additionally, paragraph 15 of the Declaration states that the liquid composition is "distinctly used for a cleaning step, not a sanitizing step". Applicant defines "sanitizing" in paragraph 14 of the declaration, as killing the microorganisms. However, applicant's arguments are in contrast to paragraph 10 of the Declaration, which states that "The product of the present application "kills more microorganisms than regular chlorinated cleaners." Furthermore, applicant argues a two step process of cleaning, followed by a sanitizing step. Applicant's arguments are unpersuasive because it is not commensurate in scope with the instantly claimed invention. The claims do not require a two step process.

13. Applicant argues on page 6 of the Response, that the claimed invention includes a non-corrosive preparation so it cannot include bleach or bleach activators. Applicant's arguments are unpersuasive in view of the indefiniteness as described above. Specifically, the claim recites a "corrosive acidic pH", "cleaner having "noncorrosive properties" and a cleaner that "does not produce any substantial corrosive effects". Furthermore, applicant's claim language of "includes" is open-ended such that additional ingredients can be present.

14. Applicant has not provided convincing evidence to compare applicant's invention prior to the addition of the nitrile activator, lactone, and imine and applicant's invention after the addition of nitrile activator, lactone, and the imine and whether the additional prior art components materially affect the basic and novel characteristics of applicant's claimed invention. Specifically, applicant's declaration is not commensurate in scope with applicant's claimed invention.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharidan Carrillo whose telephone number is 571-272-1297. The examiner can normally be reached on M-W, F 6:30-5:00pm, alternating Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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